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Exchange of letters between the Chairman of the Fifth Committee and the Under-Secretary-General for Legal Affairs, the Legal Counsel

Note by the Secretary-General

The Secretary-General has the honour to transmit to the Fifth Committee the letter dated 2 April 2001 from the Chairman of the Fifth Committee to the Under-Secretary-General for Legal Affairs, the Legal Council (see annex I) and the letter dated 4 April 2001 from the Under-Secretary-General to the Chairman, which was sent in reply (see annex II).

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Annex I

Letter dated 2 April 2001 from the Chairman of the Fifth Committee to the Under-Secretary-General for Legal Affairs, the Legal Counsel

During the formal meeting of the Fifth Committee held on 26 March 2001, Member States decided to seek a legal opinion as to whether the expression "taking note of" a report may be taken to mean that the General Assembly has agreed to the content of that report.

I would appreciate it if the legal opinion requested could be provided to the Committee by 4 April, in the afternoon, when this matter will be considered again.

(*Signed*) Gert **Rosenthal**
Ambassador
Chairman, Fifth Committee

Annex II

Letter dated 4 April 2001 from the Under-Secretary-General for Legal Affairs, the Legal Counsel, to the Chairman of the Fifth Committee

I have the honour to refer to your letter of 2 April 2001 requesting by 4 April 2001 our legal opinion, pursuant to a decision of the Fifth Committee on 26 March 2001, as to whether the expression "taking note of" a report may mean that the General Assembly had agreed to the content of the report.

The meaning of the phrase "taking note of" is determined by the ordinary meaning of the expression in the context that the expression is used, in the light of the circumstances in which it was drafted and ultimately of course, the intention of the body adopting the resolution.

In this connection, reference is made to a report of the Secretary-General before the Fifth Committee in 1987 in which he indicated that, within existing resources, he would take certain actions with regard to the construction of conference facilities. The Fifth Committee requested advice as to whether "taking note of" the report would indicate approval. This Office, in an opinion read to the Fifth Committee and to the General Assembly, opined that although "taking note of" the proposed course of action did not express either approval or disapproval, the Secretary-General is instructed to proceed with the necessary work within the funds available (see A/42/PV.99). We note that, last year during the fifty-fourth session, Member States cited the latter opinion in the Fifth Committee in support of the proposition that "taking note" does not express either approval or disapproval. Such Member States, however, failed to refer to the conclusion stated in the opinion that the Secretary-General was authorized to proceed with the proposed course of action.

Thus, where a report by the Secretary-General or subsidiary organ proposes or recommends a specific course of action, *within existing resources*, which requires a decision by the General Assembly, a decision or resolution taking note of such report in the absence of further comment by the organ concerned constitutes authorization of the course of action contained therein. Of course, where a report by the Secretary-General or subsidiary organ proposes a specific course of action *that raises financial implications*, the procedures in rule 153 of the rules of procedure of the General Assembly would have to be followed and the General Assembly would have to specifically authorize the course of action and authorize specifically the additional resources after following the required procedures.

Where a report by the Secretary-General or subsidiary organ does not propose or recommend any course of action which requires a decision by the General Assembly, taking note of such report merely takes cognizance that it has been presented and does not express either approval or disapproval. Indeed, in paragraph 28 of annex VI to the Rules of Procedure of the General Assembly, the General Committee in its report on the rationalization of the work of the Assembly stated that "The General Assembly, including its Main Committees, should merely take note of those reports of the Secretary-General or subsidiary organs which do not require a decision by the Assembly and should neither debate nor adopt resolutions on them, unless specifically required to do so by the Secretary-General or the organ concerned."

Member States should, in any event, clearly express their intent when adopting a particular decision or resolution. The latter recommendation is particularly relevant if Member States do not agree with the Office of legal Affairs' opinion on the definition of the expression "taking note of" to govern the interpretation and implementation of their decisions and resolutions.

(*Signed*) Hans **Corell**
Under-Secretary-General for Legal Affairs
The Legal Counsel